

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

SHAUN SMITH
4719 MORTENSEN RD APT 106
AMES IA 50014

AMES LAWN CARE & MAINTENANCE
C/o MARC PLOESSL
1405 CURTISS AVE
AMES IA 50010

Appeal Number: 06A-UI-01182-BT
OC: 07/10/05 R: 02
Claimant: Respondent (4)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 - Able and Available for Work
871 IAC 24.1(113)a - Separation Due to Layoff
Section 96.5-1-a - Voluntary Leaving - Other Employment

STATEMENT OF THE CASE:

Ames Lawn Care & Maintenance (employer) appealed an unemployment insurance decision dated January 24, 2006, reference 07, which held that Shaun Smith (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 16, 2006. The claimant participated in the hearing. The employer participated through owner Marc Ploessl.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time laborer from August 22, 2005 through December 18, 2005, when he was laid off due to the winter weather. He was placed in an on-call status for snow removal and was able and available for work when called. He voluntarily quit his employment on January 20, 2006 to accept employment elsewhere and continues to be employed with the new employer.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. All terminations of employment are generally classified as layoffs, quits, discharges or other separations. 871 IAC 24.1(113)(a). A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer or an employer has discharged the claimant for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a.

The evidence establishes the claimant was laid off effective December 18, 2005 and placed in an on-call status. When an employer initiates a separation, the reasons for the separation must constitute work-connected misconduct before a claimant can be denied unemployment insurance benefits. A layoff does not constitute work-connected misconduct. The claimant's temporary separation from employment was not due to any misconduct on his part nor did he quit his job. He remained able and available for work and is eligible to receive unemployment insurance benefits. The claimant voluntarily quit his employment on January 20, 2006 due to other employment.

Iowa Code section 96.5-1-a provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

871 IAC 24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. The employment does not have to be covered employment and does not include self-employment.

Even though the final separation was without good cause attributable to the employer and would, standing alone, disqualify the claimant from receiving benefits, the claimant did leave in order to accept other employment and did perform services for the subsequent employer. Accordingly, benefits are allowed and the employer's account shall not be charged for benefits as of week ending January 28, 2006.

DECISION:

The unemployment insurance decision dated January 24, 2006, reference 07, is modified in favor of the appellant. The claimant is qualified for benefits, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid after January 20, 2006.

sdb/pjs